Supreme Court, U.S.
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NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

EVERDEAN MOORE, ETC., ET AL.,

Petitioners,

versus

KELLER INDUSTRIES, INC.,
A Florida Corporation,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTIONS PRESENTED

1. Where a prima facie claim of discrimination in jury selection under Batson v. Kentucky, 476 U.S. 79 (1986) and Edmonson v. Leesville Concrete Company, Inc., ____ U.S. ----, 111 S.Ct. 2077, 114 L.Ed.2d 660 (1991) has been established, are "nonquantifiable" factors such as "appearance during questioning" and "lack of responsiveness to questions" sufficient to serve as race-neutral reasons justifying the peremptory challenges?

2. In resolving a Batson/Edmonson claim, what standard should a trial court use to evaluate entirely subjective and nonverifiable reasons such as "body language," and "nonresponsiveness"?

LIST OF PARTIES TO THE PROCEEDING

1. The following persons are Petitioners in this case: Mrs. Everdean Moore, Joseph Moore, Bobbie Amiker, Clinton Amos Moore, Annie Collins, Alma Moore McGowan, Vashti Clayton, Ella Mae Curry, Wilma Branch, Delois Thompson, and Aaron Moore.

2. Keller Industries, Inc., a Florida Corporation, is the Respondent herein.

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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

EVERDEAN MOORE, ETC., ET AL.,
Petitioners,

versus

KELLER INDUSTRIES, INC.,
A Florida Corporation,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners, Everdean Moore, et al., request that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit in Moore v. Keller Industries, 948 F.2d 199 (5th Cir. 1991).

OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit rendered on December 12, 1991, is reported at 948 F.2d 199 (5th Cir. 1991). The opinion is reproduced as Appendix "A" to this Petition.

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1), Petitioners, having asserted below, in the Fifth Circuit Court of Appeals, and continuing to assert in this Court the deprivation of rights secured by the United States Constitution, as delineated in the Petition for Writ of Certiorari.

The judgment and opinion of the Fifth Circuit was rendered on December 12, 1991. Pursuant to Supreme Court Rule 13.1, this Petition is timely filed on or before March 11, 1992.

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves the following constitutional provision:

The Fifth Amendment to the United States Constitution, which provides in pertinent part:

> No person shall be . . . deprived of life, liberty, or property, without due process of law.

This case also involves 28 U.S.C. Section 1870, which provides in pertinent part:

> In civil cases, each party shall be entitled to three peremptory challenges.

STATEMENT OF THE CASE

Procedural History and Statement of Facts

This civil action was filed on February 26, 1987, by the wife of the late Rev. Amos Moore, Mrs. Everdean Moore, and their children, Joseph Moore, Bobbie Amiker, Clinton Amos Moore, Annie Collins, Alma Moore McGowan, Vashti Clayton, Ella Mae Curry, Wilma Branch, Delois Thompson, and Aaron Moore, Vol. 1 at 1. The Plaintiffs collectively will be referred to hereinafter as "the Moore family." The lawsuit was a Mississippi wrongful death action seeking to impose liability on Keller Industries, Inc., (hereinafter referred to as "Keller") for a collision between a truck owned and operated by Keller and an automobile operated by Amos Moore on January 15, 1987, id.; see also Vol. 3 at 682-84. Amos Moore died as a

result of internal brain bleeding on January 16, 1987, and the Moore family contended that this bleeding was caused by the impact of the collision, id. Federal jurisdiction was premised on diversity of citizenship, 28 U.S.C. Section 1332(a), and a jury trial was requested, id.

The case was originally tried in Meridian, Mississippi, from October 3-5, 1988, Vol. 3 at 594. The jury returned a verdict for the defense, Vol. 3 at 596. The Moore family filed a Motion for Judgment N.O.V. or, in the Alternative, for New Trial, Vol. 3 at 602. The District Court granted a new trial, ruling that it erred by failing to grant a peremptory instruction that the Keller driver was negligent as a matter of law, Vol. 3 at 646.

The case was tried a second time in Meridian, Mississippi, from May 15-17, 1989, Vol. 3 at 706. The Batson issue in the instant case arose at the second trial in May 1989. The Moore family are all Black citizens. Exhibit 2, Vol. 7 at 140. The venire was comprised of seventeen White and eight Black members. Vol. 3 at 725.[1] After voir dire examination, Keller

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[1] The members of the venire were:

1)	Cleavie Arrington	White
2)	Thomas Doherty	White
3)	Frank Rackley	Black
4)	Thomas Roundtree	White
5)	Brenda Poe	White
6)	Mary Jones	White
7)	Johnnie Wright	White
8)	Theresa Fanning	White
9)	Sam Montgomery	White
10)	Virginia Walker	White
11)	Gus Goforth	White
12)	Mildred Bonner	Black
13)	Joe Chambers	White
14)	Janie Moyer	White
15)	Edward Williamson	White
16)	Quinton Pullin	White
17)	Bessie Cheatham	Black
18)	James Jenkins	Black
19)	Lawrence Hosey	Black
20)	Trevelle McGlothlin	Black

requested the Court to strike four Black jurors for cause: Charlie Boose, Vol. 7 at 45-46, Lawrence Hosey, Vol. 7 at 46, Lifley Barlow, Vol. 7 at 46-47, and Bessie Cheatham, Vol. 7 at 47. Keller then exercised its peremptory challenges against Frank Rackley, Theresa Fanning, and Mildred Bonner, Vol. 7 at 48. Mr. Rackley and Mrs. Bonner are Black persons, Vol. 3 at 725. At this point counsel for the Moore family lodged his objection to the defense peremptory challenges under Batson. Vol. 7 at 48.

The trial court, noting the then panel opinion in Edmonson, 860 F.2d 1308 (5th Cir. 1989) which applied Batson to

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FOOTNOTE CONTINUED FROM PREVIOUS PAGE

21)	Charlie Boose	Black
22)	Frances Rogers	White
23)	Lifley Barlow	Black
24)	David Laney	White
25)	Byron Alexander	White

civil cases, opined that under Batson the defense should be made to account for its use of peremptory challenges. The defense stated that it had three reasons for striking Mr. Rackley; his age (said to be in his 50s), the fact that he had a deceased parent, and the subjective factor of "nonresponsiveness." Vol. 7 at 50. As for Ms. Bonner, the defense stated that she had indicated that she had a friend or spouse who had suffered a death from trauma, that her son had been involved in an auto accident, and that she had some medical background. Vol. 7 at 51. As the Court pointed out, Ms. Bonner's later responses were to the effect that her son was a defendant in a suit involving an auto accident, Vol. 7 at 51.

The Plaintiffs made a showing of comparable factors in the jury pool, to show that the criteria alleged by the

defense in response to the Batson objection were pretextual. The Plaintiffs pointed out that juror Laney, who was White, was also apparently in his 50s, but was not struck by the defense. Vol. 7 at 52. The Plaintiffs pointed out that there were several other persons who were at least in the 50 age range who were White and not struck. Id. Counsel also pointed out that five persons, including Mrs. Bonner, had responded affirmatively to the question whether their parents had died, and yet the other four persons were not struck. Id. Finally, the Moore family objected to the use of subjective factors such as "nonresponsiveness." Id.

The Court found that it was "not satisfied that the strikes were exercised because of race. There were legitimate reasons given," Vol. 7 at 53.

At the second trial, the District

Court instructed the jury to find Keller Industries to be negligent as a matter of law. The jury returned a verdict for $12,000, Vol. 3 at 715. The Moore family filed a timely Motion for New Trial, asserting that the District Court erred in allowing Keller to exercise peremptory challenges in a racially discriminatory manner, and that the damages awarded were inadequate as a matter of law and contrary to the great weight of the evidence, Vol. 3 at 719. The District Court overruled the Motion, Vol. 3 at 769.

The Moore family filed a timely Notice of Appeal, Vol. 3 at 770. On appeal, the Moore family raised the peremptory challenge issue in its Original Brief, specifically requesting the Fifth Circuit to review the District Court's determination that the peremptory challenges exercised by Keller were not

motivated by race. Keller responded by pointing out that the Fifth Circuit refused to apply the rationale of Batson v. Kentucky, 476 U.S. 79 (1986) to civil cases in Edmonson v. Leesville Concrete Company, Inc., 895 F.2d 218 (5th Cir. 1990) (en banc). In their reply brief, the Moore family recognized that Edmonson foreclosed their jury challenge argument in the Fifth Circuit, but specifically preserved the argument for purposes of later review. The Fifth Circuit opinion did not address the issue. Moore v. Keller Industries, 937 F.2d 127 (5th Cir. 1990).

This Court granted certiorari and remanded the case for reconsideration in light of Edmonson. Moore v. Keller Industries, ____ U.S. ____, 111 S.Ct. 2820, 115 L.Ed.2d 991 (1991).

On remand, the Fifth Circuit again

affirmed. The affirmance was based, in significant part on the Court's disposition regarding the use of nonverifiable reasons for peremptory strikes. Following its opinions in United States v. Clemons, 941 F.2d 321 (5th Cir. 1991) and United States v. Roberts, 913 F.2d 211 (5th Cir. 1990), cert. denied, 111 S.Ct. 2264, 114 L.Ed.2d 716 (1991), the Court of Appeals held that a proffered explanation for a peremptory challenge "need not be quantifiable" and that "disinterested demeanor" and "inattentiveness" were valid, race-neutral reasons for peremptory strikes. Moore v. Keller Industries, 948 F.2d 199, 201 (5th Cir. 1991).

REASONS FOR GRANTING THE WRIT

Petitioner respectfully suggests that this Court should grant a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit in order to resolve the following issue, on which there exists a conflict between the Fifth Circuit and several state courts of last resort, and which presents important questions of federal law which have not been, but should be, decided by this Court.

CERTIORARI SHOULD BE GRANTED TO DETERMINE WHETHER ENTIRELY SUBJECTIVE REASONS FOR PEREMPTORY CHALLENGES CAN INSULATE THOSE CHALLENGES FROM BATSON SCRUTINY.

As this Court pointed out in Batson, "peremptory challenges constitute a jury selection practice that permits 'those to discriminate who are of a mind to discriminate,'" Batson v. Kentucky, 476 U.S. 79, 96 (1986).

Both issues raised in this Petition are variations on a theme: may the party defending against a Batson challenge insulate their strikes from scrutiny by offering justifications that, by their very nature, can be neither rebutted nor reviewed?

The Court of Appeals opined in the case at bar that:

> The reasons offered [by counsel for Keller] in this case include age, familial relationships, appearance during questioning, responsiveness to questions, and background knowledge that raised the possibility of bias. We previously have found age and appearance to be legitimate reasons and have allowed trial counsel to rely upon intuitive assumptions. An explanation "need not be quantifiable" provided that the intent is not race-based. We also have found "disinterested demeanor" and "inattentiveness" to be valid, race-neutral reasons for peremptory strikes.

Moore v. Keller Industries, 948 F.2d at 201 (citations omitted).

In so holding the Court of Appeals followed its own precedent on this issue. United States v. Clemons, 941 F.2d 321 (5th Cir. 1991); United States v. Roberts, 913 F.2d 211 (5th Cir. 1990), cert. denied, ____ U.S. ____, 111 S.Ct. 2264, 114 L.Ed.2d 716 (1991); United States v. Melton, 883 F.2d 336 (5th Cir. 1989). The

Fifth Circuit has gone so far as to suggest that a prosecutor's "gut reaction" that a commercial artist would be lenient toward drug offenders was an acceptable race-neutral reason under Batson. United States v. Moreno, 878 F.2d 817, 820-21 (5th Cir.), cert. denied, 493 U.S. 979 (1989).

In Batson, this Court taught that the charge of race discrimination in jury selection may not be rebutted merely by counsel's denial that he had a discriminatory motive or by counsel's affirmation that he exercised the peremptory challenges in good faith. Batson, 476 U.S. at 98. Surely it is difficult to distinguish the subjective and nonreviewable reasons accepted by the Fifth Circuit in this case from the self-serving affirmations condemned by this Court in Batson.

Indeed, explanations for striking a juror such as inattentiveness, demeanor, body language and the like are easily used as "shams and pretexts" by prosecutors who wish to hide their real reasons for excusing minority jurors. Courts must be willing, at a minimum, to analyze such subjective challenges with greater scrutiny, otherwise "[t]his type of non-specific explanation based on body language or looks could become 'the standard untestable post-hoc justification for what is in reality an unconstitutional exclusion based on group discrimination.'" Avery v. State, 545 So.2d 123, 127 (Ala.Cr.App. 1988), quoting People v. Charron, 193 Cal.App.3d 981, 991, 238 Cal.Rptr. 660, 666 (1987).

Other courts have adopted the kind of heightened scrutiny discussed in Avery, or, alternatively, have disallowed

reliance on completely subjective factors altogether. See People v. Harris, 544 N.E.2d 357 (Ill. 1989) ("Any demeanor-based explanation must be closely watched"); Davis v. State, 796 S.W.2d 813 (Tex.Cr.App. 1990) (appearance alone not sufficient reason to strike black juror); Commonwealth v. Joyce, 467 N.E.2d 214, 218 (Mass.App. 1984)(insufficient to state that juror's voir dire answers were "abrupt" and "too prompt"); State v. Gilmore, 511 A.2d 1150, 1166 (N.J. 1986) ("reasons" that are really hunches, gut reactions, and seat-of-the-pants instincts are really just euphemisms for prejudice); United States v. Horsley, 864 F.2d 1543, 1546 (11th Cir. 1989) (permitting strike based on "gut reaction" would render Equal Protection Clause meaningless).

The Texas Court of Criminal Appeals, in reviewing this issue, stated:

> Although we are unwilling to say that a juror's demeanor cannot ever be a racially neutral motive for a prosecutor's peremptory challenge, the protection of the constitution guarantees that Batson requires the court to scrutinize such elusive, intangible, and easily contrived explanations with a healthy skepticism. Otherwise, "inattentiveness" will inevitably serve as a convenient talisman transforming Batson's protection against racial discrimination in jury selection into an illusion and the Batson hearing into an empty ceremony.

Daniels v. State, 768 S.W.2d 314, 317 (Tex.Cr.App. 1988). In Daniels, the prosecution challenged two black female jurors on the ground that they were inattentive during voir dire, that one made no eye contact, and the other showed more interest in the defense attorney. These reasons were insufficient to overcome the prima facie case of discrimination, the Court held, especially in light of the fact that the prosecution failed to engage either of the jurors'

attention with individual questions. Id. at 317.

Daniels is not alone in noting that a perfunctory or even nonexistent examination of the challenged juror by the prosecution suggests that the real motivation for the strike is racial. See Woods v. State, 801 S.W.2d 932, 937 (Tex.Cr.App. 1990); Slappy v. State, 503 So.2d 350 (Fla.App. 1987); Ex Parte Branch, 526 So.2d 609, 624 (Ala. 1987); People v. Turner, 726 P.2d 102, 111 (Cal. 1986); People v. Treveno, 704 P.2d 719, 732 (Cal. 1985); Seubert v. State, 749 S.W.2d 585, 586 (Tex.Cr.App. 1988); Avery, supra, 545 So.2d at 127.

Furthermore, the use of entirely subjective justifications for peremptory challenges insulates the strikes from appellate review. It is difficult to comprehend how an appellate court can

conduct a review under the "clearly erroneous" standard when the reasons given for the peremptory challenges are not capable of verification, rebuttal, or review. Compare Hernandez v. New York, ____ U.S. ____, 111 S.Ct. 1859, 114 L.Ed.2d 395 (1991).

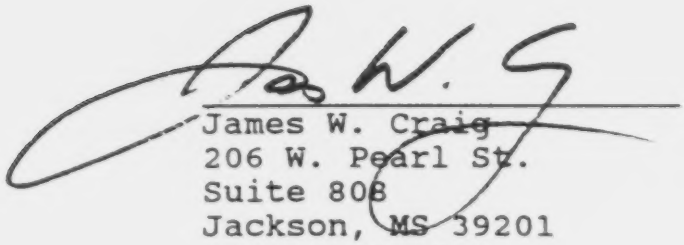
The District Court did not subject the subjective reasons given by Keller's lawyers to any degree of scrutiny, but instead accepted these reasons at face value. This Court should take this opportunity to set forth clear guidelines for scrutinizing such nonverifiable "reasons," or, in the alternative, hold that they are to be given no effect at all.

CONCLUSION

This Court should grant certiorari to resolve the confusion in the lower courts on the use and review of entirely subjective factors as justifications for peremptory challenges.

Dated: March 11, 1992.

Respectfully Submitted,



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APPENDIX "A": FIFTH CIRCUIT OPINION

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 89-4613

EVERDEAN MOORE, ETC., ET AL.,

Plaintiffs-Appellants
Cross-Appellees,

versus

KELLER INDUSTRIES, INC,
A Florida Corporation,

Defendant-Appellee,
Cross-Appellant.

Appeal from the United States
District Court for the
Southern District of Mississippi
(CA-E87-0018(L))

December 12, 1991.

ON REMAND FROM THE SUPREME COURT OF
THE UNITED STATES

Before POLITZ, WILLIAMS, AND SMITH,
Circuit Judges.

POLITZ, Circuit Judge:

I

This matter is on remand from the Supreme Court, ____ U.S. ____, 111 S.Ct. 2820, 115 L.Ed.2d 991, for further consideration in light of Edmonson v. Leesville Concrete Company, ____ U.S. ____, 111 S.Ct. 2077, 114 L.Ed.2d 660 (1991). Before us is a diversity suit brought by the survivors of Amos Moore against Keller Industries, Inc. for damages caused by an automobile accident involving Moore and a Keller employee. On the appeal we affirmed a judgment on jury verdict for the plaintiffs. On reconsideration after remand, for the reasons assigned, we affirm.

Background

The plaintiffs assign error in Keller's use of peremptory challenges to strike blacks from the jury. At the time of trial the district court applied our panel decision in Edmonson v. Leesville

Concrete Co., 860 F.2d 1308 (5th Cir. 1988), which held that Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986), applies to civil trials. The record before us, therefore, is fully developed regarding the Batson. When the case came before us on appeal the Edmonson panel decision had been replaced by our Edmonson en banc holding that Batson was not applicable to civil cases. 895 F.2d 218 (5th Cir. 1990). It was this en banc opinion which the Supreme Court reversed. We therefore review the Batson claim advanced by the Moores in accordance with the Supreme Court's teachings in Edmonson and Batson.

Keller's counsel struck three jurors: Rackley, Bonner, and Fanning. Rackley and Bonner are black; Fanning is white. Counsel offered these reasons for striking the two black jurors:

> [A]mong the criteria used by the defendant to strike . . . Rackley, first, his age. He's fairly elderly, in his 50's, which we felt may prejudice him towards the plaintiff due to the age of the deceased. He also has or noted a deceased parent, which would felt would bias him somewhat towards the plaintiff. I also noticed him to be fairly nonresponsive in terms of contemplating questions from both the plaintiffs' and the defendant's counsel during voir dire . . . .
>
> [Bonner] apparently . . . had a parent -- a friend or a spouse who had suffered a death from trauma, which immediately raised a red flag for defense counsel which we think would prejudice her in plaintiffs' favor. She also appears to have some medical knowledge that may or may not be advantageous to the defendant, and I'm still not sure what the situation is with her son regarding the auto accident. I don't think it was clear; and because it wasn't clear, I didn't want to take a chance on her, and I thought there was a good possibility that she could be prejudiced in favor of the plaintiffs.

The district court accepted these articulated reasons and made the factual finding that Keller's counsel did not strike the jurors for a discriminatory

purpose.

Analysis

The three-step process for evaluating Batson claims requires that the complaining party first make a prima facie showing that opposing counsel has exercised peremptory challenges on the basis of race. Batson v. Kentucky, 476 U.S. at 96-97, 106 S.Ct. at 1722-1723. Once this showing has been made the burden shifts to the striking party to articulate a race-neutral explanation for the strike. Id. at 97-98, 106 S.Ct. at 1723-24. Thereafter the trial court must determine whether the Batson claimant has proven purposeful discrimination. Id. at 98, 106 S.Ct. at 1724. The district court has the discretion to fashion the procedure necessary to evaluate counsel's race-neutral explanation. United States v. Clemons, 941 F.2d 321 (5th Cir. 1991).

The trial court's decision on the ultimate question of discriminatory intent is a finding of fact usually accorded great deference on appeal because of the inherent credibility assessment. Hernandez v. New York, ____ U.S. ____, 111 S.Ct. 1859, 114 L.Ed.2d 395 (1991)(plurality) (citing Batson); United States v. Valley, 928 F.2d 130 (5th Cir. 1991) (citing United States v. Moreno, 878 F.2d 817 (5th Cir.), cert. denied, 493 U.S. 979, 110 S.Ct. 508, 107 L.Ed.2d 510 (1989)).

Once counsel has offered a race-neutral explanation and the trial court has ruled on the ultimate issue of intentional discrimination, we need consider only the sufficiency of the race-neutral reasons articulated by Keller's counsel. Hernandez v. New York, 111 S.Ct. at 1866.

A neutral explanation is one "based upon something other that the race of the juror." Clemons, 941 F.2d at 324-25 (citing Hernandez). The reasons offered in this case include age, familial relations, appearance during questioning, responsiveness to questions, and background knowledge that raised the possibility of bias. We previously have found age and appearance to be legitimate reasons and have allowed trial counsel to rely upon intuitive assumptions. An explanation "need not be quantifiable" provided that the intent is not race-based. Clemons, 941 F.2d at 325. We also have found "disinterested demeanor" and "inattentiveness" to be valid, race-neutral reasons for peremptory strikes. United States v. Roberts, 913 F.2d 211 (5th Cir. 1990), cert. denied, ____ U.S. ____, 111 S.Ct. 2264, 114 L.Ed.2d 716

(1991); United States v. Melton, 883 F.2d 336 (5th Cir. 1989); United States v. Lance, 853 F.2d 1177 (5th Cir. 1988). See also United States v. DeLaRosa, 911 F.2d 985, 991 (5th Cir. 1990), cert. denied, ____ U.S. ____, 111 S.Ct. 2275, 114 L.Ed.2d 726 (1991) (belief that a juror employed by a church-related agency "basically wants to forgive people" was accepted); United States v. Moreno, 878 F.2d 820-21 ("gut reaction" that commercial artist would be lenient toward narcotics offenders not a pretext).

The Moores maintain that Keller's explanations are pretextual. Notwithstanding counsel's assigned reasons, "an invidious discriminatory purpose may often be inferred from the totality of the relevant facts, including the fact, if it is true, that the [classification] bears more heavily on one

race than another." Washington v. Davis, 426 U.S. 229, 242, 96 S.Ct. 2040, 2049, 48 L.Ed.2d 597 (1976) (quoted in Hernandez). The disproportionate exclusion of members of a certain race, while not prohibited in and of itself, may nevertheless serve as evidence that counsel's stated reason constitutes a pretext for racial discrimination. Hernandez.

The Moores argue that Keller's reasons were pretextual because white jurors similarly situated to Rackley and Bonner were not challenged. As to Rackley, the Moores argue that other jurors appeared elderly, that five jurors had deceased parents, and that the "nonresponsive" explanation is ambiguous and meaningless. Although Bonner also had a deceased parent, the Moores again complain that only two of the three available strikes were used on jurors with

deceased parents. Regarding Bonner's medical knowledge, the Moores argue that one other juror was a nurse and another a dietician.

Keller responds that the nurse had once worked for one of its medical witnesses, and was thus more prone to be biased for Keller. Keller's counsel also minimized the overlap of the dietician's experience with the medical issues in the case. As to the auto accident that caused Keller's counsel concern, the Moores assert that Bonner's son was a defendant in that accident, a predicate for bias in favor of Keller. Defense counsel indicated confusion regarding this point, however, and had suggested at trial that the son's role was unclear.

The Moores had the burden of proving pretext and therefore racial intent. United States v. Guerra-Marez, 928 F.2d

665, 673n.9 (5th Cir. 1991), cert. denied, ____ U.S. ____, 112 S.Ct. 322, 116 L.Ed.2d 263 (1991). We accord "great deference" to the district court finding that the burden was not carried. Id. The fact that Keller did not use its third peremptory challenge against a black "substantially supports the finding of no discrimination." United States v. Terrazas-Carrasco, 861 F.2d 93, 95 (5th Cir. 1988). Further, because multiple reasons led Keller's counsel to strike both Rackley and Bonner the existence of other jurors with some of their individual characteristics does not demonstrate that the reasons assigned were pretextual.

We reinstate our rulings on the issues decided on the appeal, reported in full at 937 F.2d 127 (5th Cir. 1990).

For these reasons the judgment of the district court is AFFIRMED.